

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LOCALS 302 AND 612 OF THE	)	Case No. C07-1682-JPD
INTERNATIONAL UNION OF	)	
OPERATING ENGINEERS	)	
CONSTRUCTION INDUSTRY HEALTH	)	
AND SECURITY FUND, et al.,	)	
	)	ORDER GRANTING PLAINTIFFS'
Plaintiffs,	)	MOTION FOR SUMMARY JUDGMENT
	)	
v.	)	
	)	
HIGH & MIGHTY CONSTRUCTION,	)	
INCORPORATED,	)	
	)	
Defendant.	)	
_____	)	

I. INTRODUCTION AND SUMMARY CONCLUSION

The employees' trust funds of Locals 302 and 612 of the International Union of Operating engineers ("plaintiffs") bring this suit to recover contributions, dues and attendant amounts which it claims defendant is bound to pay under its Labor Agreement with plaintiffs. *See* Dkt. No. 1. Plaintiffs make the following allegations: (1) defendant agreed to the payment of employee benefit contributions for its employees who perform bargaining unit work; (2) in doing so, defendant also agreed to pay liquidated damages, interest, attorney's fees and costs for all of its unpaid contributions; and (3) for the employment period of July 2007 and October 2007, defendant failed to promptly pay to plaintiffs all amounts due them.

01 The present matter comes before the Court on plaintiffs' Motion for Summary  
02 Judgment. Dkt. No. 19. Because defendant has failed to respond to this motion, it is treated  
03 as uncontested motion pursuant to Local Rule CR 7(b)(2). After careful consideration of the  
04 motion, governing law, and the balance of the record, the Court GRANTS plaintiffs' motion.

## 05 II. FACTS AND PROCEDURAL HISTORY

06 This is a contract case brought under the Employee Retirement Income Security Act of  
07 1974 ("ERISA"), 29 U.S.C. § 1132(e)(1) and (f). On October 16, 2007, plaintiffs filed a  
08 complaint to collect trust funds, union dues, and attendant late fees and penalties. Dkt. No. 1.  
09 The complaint alleges that defendant is bound to a collective bargaining agreement with Local  
10 612 of the International Union of Operating Engineers, and that defendant failed to pay its  
11 contributions and dues to plaintiffs for the employment period of July 2007 and October 2007.

12 On November 28, 2007, plaintiffs' complaint was served upon defendant (Dkt. No. 4),  
13 and on December 18, 2007, defendant filed an answer to plaintiffs' complaint. Dkt. No. 9.  
14 Defendant admits all of plaintiffs' factual allegations, except for two which defendant denies  
15 due to insufficient knowledge as to the truth or falsity of the allegations. Dkt. No. 9 at 2. On  
16 April 3, 2008, plaintiffs filed a motion for summary judgment arguing that the facts of its  
17 bargaining agreement with defendant are undisputed, and that defendant is therefore indebted  
18 to plaintiffs for all their requested remedies. Dkt. No. 19.

19 Defendant filed no opposition to plaintiffs' motion. On the same day that plaintiff filed  
20 this motion, defendant's attorney moved to withdraw as counsel. Dkt. No. 23. On May 8,  
21 2008, the Court denied defense counsel's motion to withdraw for failure to meet the  
22 requirements of Local Rule GR 2(g)(4)(B). Dkt. No. 25.

## 23 III. JURISDICTION

24 Pursuant to 28 U.S.C. § 636(c), the parties have consented to having this matter heard  
25 by the undersigned Magistrate Judge. This Court has exclusive jurisdiction over the subject  
26 matter of this action pursuant to Section 502(e)(1) and (f) of ERISA, 29 U.S.C. § 1132(e)(1)

01 and (f) and under Section 301(a) of the Taft-Hartley Act, 29 U.S.C. § 185(a). Venue is proper  
02 in this district under Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2), because the plaintiff  
03 trusts are administered in this district.

#### 04 IV. DISCUSSION

##### 05 A. Federal Rule of Civil Procedure 56

06 Summary judgment “shall be entered forthwith if the pleadings, depositions, answers to  
07 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no  
08 genuine issue as to any material fact and that the moving party is entitled to a judgment as a  
09 matter of law.” Fed. R. Civ. P. 56(c). “When a motion for summary judgment is properly  
10 made and supported, an opposing party may not rely merely on allegations or denials in its own  
11 pleading; rather, its response must—by affidavits or as otherwise provided in this rule—set out  
12 specific facts showing a genuine issue for trial. If the opposing party does not so respond,  
13 summary judgment should, if appropriate, be entered against that party.” Fed. R. Civ. P.  
14 56(e)(2).

##### 15 B. Plaintiffs’ Motion for Summary Judgment

16 Here, plaintiffs filed a detailed motion supported by admissible and competent evidence  
17 establishing that defendant owes plaintiffs \$3,424.11 including interest and penalties. Dkt. No.  
18 21, Exs. F and G. Plaintiffs’ summary judgment papers satisfy the burden of Rule 56(c) by  
19 establishing that the nonmovant has failed to present a genuine issue as to any material fact.  
20 This failure of proof “renders all other facts immaterial,” and thereby entitles plaintiffs to  
21 summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

22 As outlined in plaintiffs’ motion, defendant is bound to a collective bargaining  
23 agreement with Local 612 of the International Union of Operating Engineers, under which  
24 defendant is required to promptly and fully report for and pay monthly contributions to  
25 plaintiffs. In the collective bargaining agreement, defendant accepted plaintiffs’ Agreements  
26 and Declarations of Trust in which it agreed to pay liquidated damages and interest on all

01 delinquent contributions, as well as attorney's fees and costs that plaintiffs incur in the  
02 collection of defendant's unpaid obligations. For the employment periods of July 2007 and  
03 October 2007, according to the undisputed evidence, defendant failed to pay its contributions.  
04 Defendant is therefore obligated to plaintiffs for contributions, dues, liquidated damages, and  
05 interest in the amount of \$1,356.31 (Dkt. No. 21, Ex. F), as well as attorney's fees and costs in  
06 the amount of \$2,067.80. Dkt. No. 21, Ex. G.

07 Plaintiffs' brief was supported by the collective bargaining agreement between the  
08 parties (Dkt. No. 21, Ex. A), the various trust agreements (Dkt. No. 21, Exs. B, C, and D), a  
09 remittance report from defendant in which defendant acknowledges its outstanding payments  
10 (Dkt. No. 21, Ex. E) from the months of July 2007 and October 2007, and other documents  
11 verifying the amount of overdue contributions, liquidated damages and interest, attorney's fees,  
12 and costs incurred (Dkt. No. 21, Exs. F and G).

13 C. Defendant's Failure to Reply

14 Defendant has failed to respond to plaintiffs' motion. Under Local Rule CR 7(b)(2),  
15 "[i]f a party fails to file papers in opposition to a motion, such failure may be considered by the  
16 court as an admission that the motion has merit." Furthermore, by neglecting to respond to the  
17 arguments made in plaintiffs' motion, defendant has failed to meet its burden of moving beyond  
18 the pleadings to, in the words of the rule, "set forth specific facts showing that there is a  
19 genuine issue for trial." Fed. R. Civ. P. 56(e). As a result, plaintiffs' motion should be  
20 granted.

21 V. CONCLUSION

22 For the foregoing reasons, the Court ORDERS that plaintiffs' Motion for Summary  
23 Judgment (Dkt. No. 19) be GRANTED. Plaintiffs are awarded the sum of \$1,356.31 for  
24 contributions, dues, liquidated damages, and interest. Plaintiffs are also awarded the sum of  
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01 \$2,067.80 for attorney's fees and costs. The Clerk of Court is directed to furnish a copy of  
02 this order to the parties.

03 DATED this 17th day of June, 2008.

04   
05 JAMES P. DONOHUE  
06 United States Magistrate Judge  
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